



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME COUNCIL 93 ON BEHALF OF DERRY *
PUBLIC WORKS, LOCAL 1801 *

Petitioner *

v. *

TOWN OF DERRY, N.H. *

Respondent *

CASE NO. A-0413:19

DECISION NO. 86-41

APPEARANCES

Representing the Petitioner, AFSCME COUNCIL 93 on behalf of Local 1801

James C. Anderson, Field Representative

Representing the Respondent, the Town of Derry

Gary W. Wulf, Chief Negotiator

Also in Attendance

Charles Buzzell, Chairperson, Local 1801
Sandra Lacropolis, Payroll Clerk
Rodney Bartlett, Public Works Director

BACKGROUND

On October 17, 1985 AFSCME COUNCIL 93, on behalf of its Local Union 1801, (Union) filed improper practice charges against the Town of Derry (Town) claiming violations of RSA 273-A:5, I (h) and (i) and RSA 273-A, IX (d).

The Union specifically charged that the Town, under PELRB order (#85-09) heard the grievances filed by Mark Brassard and Gerald Mafera on February 26, 1985 and on March 6, 1985 agreed that both employees had permanent employee status and so informed the Union. The Union alleges that the Town then did incorrectly compute the benefits and back-pay due to the two employees. The Union has computed the benefits and pay and asks PELRB to order the Town to pay the proper amounts. Copies of correspondence between the Union and the Town were submitted with the complaint, as were the various calculations of back-pay and benefits.

The Town denied any breach of RSA 273-A and pointed at what the differences turned on when the employees could be considered "permanent" and when and how long the employees would be in "probationary" status. The Town pointed out that the question had been presented to an arbitration proceeding and the arbitrator had agreed with the Town that probationary periods begin with the commencement of permanent employment. The Town had paid the employees accordingly. A hearing was held at the PELRB office in Concord, N.H. on April 10, 1986 with all parties represented.

FINDINGS OF FACT

- 1) PELRB retained jurisdiction in this case under Decision and Order, #85-09.
- 2) The Town did pay Brassard \$321.75 and Mafera \$346.45. Union argues Brassard should have been paid \$1682.30 and Mafera \$854.97.
- 3) Both Brassard and Mafera have worked for the Town in seasonal and temporary positions and have worked for the Town over a year.
- 4) The Town and the Union have an agreed contract which contains a wage scale system with steps and provides for a six (6) month "probationary" period.
- 5) The "step" system provides for entrance rate at "step A" (1st step), after 6 months go to "step B" (2nd step) and after one year (anniversary date) move to "step 3" (3rd step).
- 6) All testimony and evidence offered indicated that Mark Brassard and Gerry Mafera performed their work satisfactorily.
- 7) The Union chairperson of Local 1801 testified he compared pay and benefits owed Brassard and Mafera with help form the finance department of Town.
- 8) Both Brassard and Mafera have joined the Union and had dues deductions taken from their pay.
- 9) Testimony from the Town payroll clerk indicated that the difference in interpretation was of the beginning date of permanent employment. She testified Mafera's "transaction form shows: Mafera as "seasonal"- 2/7/83 and "temporary" as of 6/27/83 but that the date of "permanent" status of 1/1/85 was wrong, that he actually become a permanent employee on 2/7/84 but that no notations were in the Town's files to show this was an error.
- 10) The Town's records also indicate Mafera was placed on "step" 17-B on the 1/1/85 date. The Town payroll clerk testified it was standard (last 6 years) practice to place new permanent employee on "step A"; in this case town records placing Mafera at step 17B were wrong. (Standard practice was supported by other records of other employees..)
- 11) The Payroll clerk testified further that Mafera's permanent date was 2/7/84 and that he was placed under a contract rate as of that date, and he has worked since that time. Brassard, on the other hand, was hired as temporary truck driver on 4/11/83 and had no break in service

until his resignation on 12/8/84 (not quite 20 months) and was made permanent after one year.

- 12) The clerk testified that temporary employees were usually appointed for a certain period of time, such as 30 days, and then would leave but approximately 10% became permanent employees.
- 13) The Director of Public Works testified that Mafera's appropriate starting date was 2/7/84, as a permanent employee. Neither Mafera nor Brassard had any particular experience to warrant placing them on higher pay grade.

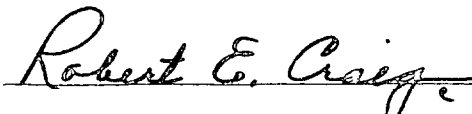
RULINGS OF LAW

The two employees in question, Mark Brassard and Gerald Mafera, both worked in the Town more than a year before they were made permanent employees retroactive to their anniversary date.

There is no prohibition in RSA 273-A, 1, IX, that a person cannot be placed in a probationary status upon becoming a permanent employee. The law simply states that no probation period may extend beyond 12 months. "Temporary" and "seasonal" employees are provided for under the act and are excluded generally from the meaning of "Public Employee". This PELR Board however has a duty to safeguard against any abuse in the use of these various categories to keep employees from being denied their rights under law. We shall be careful to examine a pattern of employment in each case to guard against any subterfuge.

DECISION

The PELRB declines to find an Unfair Labor Practice in this case, having concluded that the Town of Derry did deal fairly with its employees, Mark Brassard and Gerry Mafera, and the improper practice charge is hereby dismissed.



ROBERT E. CRAIG, CHAIRMAN
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 8th day of July, 1986.

By unanimous vote. Robert E. Craig, Chairman presiding. Members Richard Roulx and Richard Molan voting. Also present Executive Director, Evelyn C. LeBrun